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February 23, 2017

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Office of Administrative Law
San Francisco

Via Facsimile & U.S. Mail

Honorable Steven B. Berlin
U.S. Department of Labor
Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

Re: *Office of Federal Contract Compliance
Programs, United States Department of
Labor v. Google, Inc.*
Case No. 2017-OFCC-00004

Dear Judge Berlin:

On behalf of Google Inc., we are writing to request clarification of the Court's February 21, 2017 Order to Apply Expedited Hearing Procedures; Order Granting in part Google's Request for Limited Discovery Deposition. Earlier today, counsel for Google met and conferred with counsel for OFCCP by telephone, and informed OFCCP of its intention to send this letter to the Court.

The Court's Order permits Google to depose OFCCP's Person Most Knowledgeable regarding the OFCCP compliance evaluation at issue in this matter. The Court's Order states that Google may ask this witness questions related to the manner in which OFCCP selected Google for a compliance review. Order at 5. OFCCP has already identified a witness, and Google intends to depose her on March 3, 2017.

However, Google requests clarification regarding the scope of the deposition. As the Court noted in its Order, a key issue in this matter is whether OFCCP's requests for information and documents at issue in this case are reasonable. *Id.* at 3-4 (citing *United Space Alliance, LLC v. Solis*, 824 F. Supp. 2d 68 (D.D.C. 2011), and noting that the case's standard "has bite"). Included within that inquiry is (1) whether the requests were relevant to OFCCP's compliance evaluation, which began in 2015; (2) whether they were sufficiently limited in scope; and (3) whether they were unreasonably burdensome. *Id.* During the course of the evaluation, OFCCP has requested documents and information from Google on several occasions. Google contends in this proceeding that OFCCP has failed to satisfy its burden of establishing



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that its requests are sufficiently limited in scope, relevant in purpose and not unduly burdensome. Google also contends that OFCCP has failed to adequately respond to Google's written requests for information regarding these standards, and that OFCCP has failed to accept Google's good faith compromise offers with respect to OFCCP's overbroad requests.

In its Motion to Remove the Administrative Complaint from the Expedited Hearing Procedures, Google requested discovery regarding Google's contention that OFCCP has subjected Google to heightened scrutiny, including but not limited to the reasons why OFCCP believes its demands for documents and information satisfy the standards listed above. Those reasons may potentially touch on OFCCP's motivation for selecting Google for a compliance evaluation in the first place. Google is unsure whether questions regarding the scope, relevancy and burdens imposed by the requests fall within the deposition scope that the Court has permitted here.

To ensure that the parties fully comply with the Court's Order during the deposition, Google asks the Court for clarification. Specifically: does the Court's Order permit Google to ask OFCCP's witness questions relating to the scope, relevancy and burdens of OFCCP's requests for documents and information during the compliance evaluation?

Thank you.

Very truly yours,

JACKSON LEWIS P.C.

A handwritten signature in black ink, appearing to read "Lisa Barnett Sween".

Lisa Barnett Sween

ILBS/dk:bv

cc: Daniel Duff, Esq. (via e-mail)
Matthew J. Camardella, Esq. (via e-mail)
Antonio C. Raimundo, Esq. (via e-mail)
Ian Eliasoph, Esq. (via e-mail)
Marc A. Pilotin, Esq. (via e-mail)

*** Receive Results ***

Receive job successful.

Job No.	9375
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FAX

To: Hon. Steven B. Berlin

Company: U.S. Department of Labor
Office of Administrative Law Judges

Fax: (415) 625-2201 **Tel #:** (415) 625-2200

From: Lisa Barnett Sween, Esq.

Sender: Belinda Vega, ext. 5447

Subject: Office of the Federal Contract Compliance Programs, United States
Department of Labor v. Google, Inc. Case No. 2017-OFCC-00004

Date: February 23, 2017

Matter #: 337170 (16521)

Pages: 3 (including fax cover sheet)

Original: ☒ Will Follow ☐ Will Not Follow

MESSAGE: (Fax Authorization provided by Tracey Queripel)

Attached please find correspondence from Lisa Barnett Sween dated February 23, 2017. Thank you.

4811-4309-5107, v. 1

Please contact Belinda Vega at (415) 796-5447 if there are any problems with this transmission.

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